IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

WP(C).No. 31731 of 2006(C)

PETITIONER:

CHANDRAN P.M.,(WATCHMAN, FOOD CORPORATION OF INDIA)
PARACKAL HOUSE, THOPPIPPALA P.O.,
KOZHIMALA, IDUKKI.

BY ADV. SRI.M.S.UNNIKRISHNAN

RESPONDENTS:
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1. **THE GENERAL MANAGER,**
   FOOD CORPORATION OF INDIA,
   REGIONAL OFFICE, KESAVADASAPURAM,
   TRIVANDRUM-4.

2. **THE DISTRICT MANAGER,**
   FOOD CORPORATION OF INDIA, OLAVAKODE,
   PALAKKAD.

3. **THE DISTRICT COLLECTOR,**
   IDUKKI.

4. **THE TAHSILDAR,**
   TALUK OFFICE, UDUMBANCHOLA,
   NEDUMAKANDAM P.O., IDUKKI DISTRICT.

BY ADV. SRI.P.JACOB VARGHESE, SC, FCI
GOVERNMENT PLEADER SRI.SANTOSH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

W.P.(C) NO.31731/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE RELEVANT PAGES OF SSLC BOOK OF THE PETITIONER.

EXT.P2:- COPY OF THE RELEVANT PAGE OF SSLC BOOK OF PETITIONER'S FATHERS'S BROTHER'S SON MANIKUTTAN.S.

EXT.P3:- COPY OF THE COMMUNITY CERTIFICATE DT. 19.10.05 ISSUED BY THE 4TH RESPONDENT.

EXT.P4:- COPY OF THE OFFICE ORDER DT. 24.11.05 ISSUED BY 1ST RESPONDENT.

EXT.P5:- COPY OF THE ORDER DT. 24.11.05 ISSUED BY THE 1ST RESPONDENT.

EXT.P6:- COPY OF THE REPORT DT. 10.10.06 ISSUED BY THE VILLAGE OFFICER.

EXT.P7:- COPY OF THE COMMUNITY CERTIFICATE DT. 25.8.06 KERALA SCHEDULED TRIBE PROTECTION FORUM,. REG. NO.1-101/88.

EXT.P8:- COPY OF THE COMMUNITY CERTIFICATE DT. 19.2.04.

EXT.P9:- COPY OF THE ORDER DT. 19.10.06 ISSUED BY THE 3RD RESPONDENT.

ANNEXURE.R3(a):- COPY OF THE REPORT DT. 10.10.06 OF THE VILLAGE OFFICER, AYYAPPANKOVIL.

ANNEXURE R-3 (b) :- COPY OF THE D.O.LETTER NO.6714/06 DT. 13.10.06.

ANNEXURE R 3(c):- COPY OF THE LETTER NO.E8-9889/06 DT. 19.10.06.

/TRUE COPY/

P.A. TO JUDGE

tss

KURIAN JOSEPH, J.

W.P. (C). NO. 31731 OF 2006

Dated this the 7th day of September, 2007.

J U D G M E N T

Petitioner is aggrieved by Exhibit P5 order passed by the first respondent terminating him from service. It is not in dispute that no notice whatsoever was issued to him prior to the termination.

2. Petitioner was appointed as Watchman under the Food Corporation of India as per Exhibit P4 order dated 24.11.2005. Under clause 10 of Exhibit P4, "appointment is liable to be terminated, if it is found at a later date that he has furnished false information or concealed vital information". The appointment of the petitioner was under the Special Recruitment Drive for the members of the Scheduled Tribe community and it was on the strength of Exhibit P3 certificate issued by the Tahsildar, Udumbanchola wherein it is certified that petitioner belongs to Hindu-Mannan community - Scheduled Tribe, the selection was made. That certificate is still in force and no competent authority has cancelled it.

3. The termination was preceded by a clarification by the District Collector, Idukki and that letter is produced as Exhibit P9. The District Collector has given a clarification to the Area Manager of the Food Corporation of India that, as per G.O. (MS) No. 25/2005/SC ST DD dated 20.06.2005, the children of intercaste marriage are to inherit the caste status of the father and not that of the mother. The caste of the father of the petitioner is Hindu-Parayan, Scheduled Caste and not Scheduled Tribe. The caste of the mother is Hindu-Mannan, Scheduled Tribe.

4. Learned counsel for the petitioner submits that G.O.(MS) No. 25/2005/SC ST DD dated 20.06.2005 was the subject matter of scrutiny by Full Bench of this Court leading to the judgment reported in ***Indira vs. State of Kerala*** ***(2005(4) KLT 119)*** wherein it has been declared that the children of intercaste marriage are entitled to inherit the caste of mother. Learned Special Government Pleader submits that the matter is now pending before the Supreme Court.

5. Be that as it may, under Section 11 of Kerala (Scheduled Caste and Scheduled Tribe) Regulation of Issue of Community

Certificates Act, 1996 (Act 11/96), the only authority competent to cancel the certificate issued by the competent authority, namely Tahsildar regarding caste status is the Scrutiny Committee. There is no case for the respondents that Exhibit P3 certificate has been cancelled. Even the District Collector has not stated that Exhibit P3 has been cancelled though he would have been otherwise incompetent to say so. Thus the emerging position is that, as far as the petitioner is concerned, Exhibit P3 certificate issued to him is still in force. No competent authority has cancelled it. There is no case for anybody that petitioner has played any fraud.

6. Learned Standing Counsel for the Food Corporation of India, however, submits that the District Collector has clarified that Exhibit P3 is issued ignoring Government Order dated 20.06.2005. But the fact remains that the petitioner is entitled to have the certificate maintained in view of the Full Bench decision of this Court.

7. Be that as it may, it is not a case as if the petitioner produced false certificate before the appointing authority as

stated in the impugned Exhibit P5 order and vehemently contended by the learned Standing Counsel. Petitioner only produced a certificate issued to him by the Tahsildar. If that certificate is not correct, it is for the authorities concerned to get that duly cancelled, under Act 11 of 1996. This is not a case where the appointment should have been terminated without notice to the petitioner. Petitioner was deprived of his right to explain his position.

Therefore, I quash Exhibit P5. It is made clear that unless and until Exhibit P3 is duly cancelled by the competent authority under Act 11 of 1996, there shall be no interference on the appointment of the petitioner on that count. Needless to say that Exhibit P9 is of no consequence as far as the appointment of the petitioner is concerned, since the only competent authority is the Scrutiny Committee and not the District Collector. The petitioner shall be immediately reinstated in service. He shall be entitled to continuity of service for all purposes except the actual wages for the period he was kept out of service, in case he is reinstated in service within a period of ten days from the date of production of

a copy of this judgment by the petitioner and if not he would be entitled to the wages for that period also.

This writ petition is disposed of as above.

KURIAN JOSEPH, JUDGE.

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